

**WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM #T08-MST-887
FOR DATA COMMUNICATIONS EQUIPMENT
BETWEEN
THE STATE OF WASHINGTON, DEPARTMENT OF INFORMATION SERVICES
AND
Alcatel USA Marketing, Inc.**

This Participating Addendum ("PA") number #T08-MST-887 is entered into between the State of Washington, Department of Information Services ("DIS" or "State") and Alcatel USA Marketing, Inc. ("Contractor" or "Alcatel"), under the Western States Contracting Alliance ("WSCA") Master Price Agreement Number AR-1466 ("Master Agreement") for data communications equipment and associated maintenance and training. The State is a member of WSCA (a "Participating State") and, upon Alcatel's acceptance and execution of this PA, will become a Participating Entity (as defined in Attachment 1 to this PA) under the Master Agreement.

The undersigned hereby represent, acknowledge, and agree as follows:

1. **Scope:** This PA is entered into for the purpose of making the data communications equipment and associated maintenance and training under the Master Agreement available to Washington State Purchasers. Services provided hereunder shall be limited to Purchased Services (as defined in Attachment 1 to this PA). All other types of services are expressly excluded from the scope of this PA.
2. Changes to the Master Agreement specific to the State of Washington are specified in the Attachment(s) to this PA, incorporated herein by this reference. In the event of any inconsistency between this PA and the Master Agreement, the inconsistency shall be resolved by giving precedence to the terms and conditions of this PA for all Orders (as defined in Attachment 1) placed under it.
3. **Primary Contact/ Legal Notices:**
 - 3.1. Any notice or demand or other communication required or permitted to be given under this PA or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, or via facsimile, to the parties at the addresses and fax number provided in this section. For purposes of complying with any provision in this PA or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.
 - 3.2. Notices shall be effective upon receipt or five (5) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
 - 3.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this PA is served upon Alcatel or Participating Entity, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Alcatel and Participating Entity further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.
 - 3.4. For Participating Entity:

State of Washington Department of Information Services	
Attn: Master Contract Administrator	
<i>Mailing Address:</i>	<i>Street Address:</i>
PO Box 42445	1110 Jefferson Street SE
Olympia, WA 98504	Olympia, WA 98504
Phone: (360) 902-3551	
Fax: (360) 586-1414	
E-mail: mcadmin@dis.wa.gov	

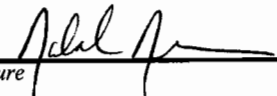
3.5. For Alcatel:

Alcatel USA Marketing, Inc.	
Attn:	
Manager, Dan Holden	
Mailing Address:	
7611 N Audubon Street	
Spokane, WA 99208	
Phone: (509) 879-8694	
Fax: (509) 466-2662	Email: Dan.Holden@alcatel.com

4. This PA together with its Attachment 1 hereto and together with the Master Agreement and its Attachments A, B-1 and B-2 (administered by the State of Utah), set forth the entire agreement between the parties with respect to the subject matter hereof and supersede all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Additionally, the Utah State Procurement Code and Procurement Rules referenced in Section 6b of the Cover Page (State of Utah Contract Signature Page) of the Master Agreement are expressly excluded. Terms and conditions inconsistent with, contrary to, or in addition to the terms and conditions of this PA and the Master Agreement, shall not be added to or incorporated into this PA or the Master Agreement, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this PA shall prevail and govern over any and all such such inconsistent or additional terms. All Orders (as defined in Attachment 1) issued by Purchasers (as defined in Attachment 1) within the jurisdiction of this PA shall include the terms of this PA and reference PA Number T08-MST-887.

IN WITNESS WHEREOF, the parties have executed this PA as of the date of execution by both parties below.

Approved
State of Washington
Department of Information Services




Signature
Roland Rivera

Print or Type Name
TSD Assistant Director

Title
3/7/08

Date

Approved
Alcatel USA Marketing, Inc.



Signature
JOHN GARCIA

Print or Type Name
Director of Contracts

Title
2-12-08

Date

Approved as to Form
State of Washington
Office of the Attorney General

Signature
Suzanne Shaw

Print or Type Name
Senior Counsel, AGO

Title

Date

Contractor Information
Contractor's UBI Number:
Minority or Woman Owned Business Enterprise
Yes No <input checked="" type="checkbox"/>
(Certification Number)

ATTACHMENT 1
WESTERN STATES CONTRACTING ALLIANCE
PARTICIPATING ADDENDUM #T08-MST-887
FOR
DATA COMMUNICATIONS PRODUCT
BETWEEN
THE STATE OF WASHINGTON, DEPARTMENT OF INFORMATION SERVICES
AND
ALCATEL USA MARKETING, INC.

1. DEFINITIONS.

“Acceptance Date” shall mean: (i) for Contractor-installed Products or Products undergoing formal acceptance testing, the date of Purchaser’s written notification to Contractor of acceptance of the Products; (ii) for other Products, the tenth (10th) Business Day after the date of delivery.

“Confidential Information” shall mean information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, Purchaser source code, Purchaser network configuration information, or other information which is marked confidential at the time of disclosure.

“Contractor” shall mean Alcatel USA Marketing, Inc., its employees and agents. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this PA.

“Customer” shall mean the same as “Purchaser.”

“DIS” shall mean the State of Washington, Department of Information Services.

“Effective Date” shall mean the first date this PA is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this PA.

“Order Document”/“Order” shall mean any official State document and attachments thereto specifying Products and Services to be purchased or licensed from Contractor under this PA. Each Order shall specify on its face the types and quantities of Products and/or Services to be furnished by Contractor pursuant to the Order, the delivery date(s), and the installation site(s).

“Participating Addendum” or “PA” shall mean this agreement between the Contractor and the State of Washington, a Participating State, that clarifies the operation of the Master Agreement and may add other state-specific language or other requirements.

“Participating Entity” shall mean a member of WSCA who has indicated its intent to participate, as disclosed in the solicitation, or who subsequently signs a PA.

“Procuring Agency(ies)” shall mean the same as “Purchaser.”

“Product(s)” shall mean data communications equipment, specifically, Alcatel switches, associated components, support, software and documentation.

“Proprietary Information” shall mean information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by United States copyright, patent, trademark, or trade secret laws.

“Purchased Services” means services provided to accomplish routine, continuing and necessary functions as defined in the Revised Code of Washington 39.29.06(9).

“Purchaser” shall mean DIS or any other state agency, or political subdivision (including public schools, colleges

or universities), or qualified non-profit organization of the state of Washington, who have a properly executed Interlocal Cooperative Agreement (Customer Service Agreement) with DIS.

“**Purchasing Entity(ies)**” shall mean the same as “Purchaser”.

“**Service(s)**” shall mean installation, training and maintenance services for eligible Products. Services provided hereunder shall be limited to Purchased Services only. All other types of services are expressly excluded from this PA.

“**Subcontractor**” shall mean one not in the employment of Contractor, who is performing all or part of the business activities under this PA under a separate contract with Contractor. The term “Subcontractor” means Subcontractor(s) of any tier.

2. ORDER OF PRECEDENCE. In the event of any inconsistency in this PA, the inconsistency shall be resolved in the following order of precedence:

- (i) Sections of this PA, including this Attachment 1;
- (ii) WSCA Master Agreement, Number AR-1466;
- (iii) Contractor’s Response to Request for Proposal (“RFP”) DG7500 (“Response”);
- (iv) Utah’s Request for Proposal DG7500.

3. ACCEPTANCE TESTING. Contractor agrees that Purchaser may choose to require formal acceptance testing on Products purchased under this PA. Such acceptance testing criteria shall be mutually negotiated and agreed to by both Purchaser and Contractor on an individual case basis. In that case, no payment will be authorized until the Product has met the standard of performance and has been accepted, in writing, by Purchaser.

4. TITLE. Upon receipt of payment Contractor shall convey Purchaser good title to any equipment, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

5. RECORDS ADMINISTRATION. The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this PA. These records will be retained by the Contractor for at least six (6) after the PA terminates, or until all audits or litigation initiated within the six (6) years have been completed, whichever is later.

6. SURVIVORSHIP. All license and purchase transactions executed and Services provided pursuant to the authority of this PA shall be bound by all of the terms, conditions, prices and discounts set forth within this PA or the Master Agreement, notwithstanding the expiration of the initial term of this PA or the Master Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this PA and the Master Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this PA or the Master Agreement shall so survive. In addition, the terms of the sections titled Contractor’s Commitments, Warranties and Representations; Protection of Purchaser’s Confidential Information; Order of Precedence; Publicity; and Disputes shall survive the termination of this PA.

7. ADVANCE PAYMENT PROHIBITED. No advance payment shall be made for Products and/or Services furnished by Contractor pursuant to this PA. Notwithstanding the above, payments for maintenance Services may be made in advance on a quarterly or annual basis, at Purchaser’s option.

8. TAXES. Purchaser will pay sales and use taxes, if any, imposed on the Products and/or Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor’s income or gross receipts, or personal property taxes levied or assessed on Contractor’s personal property.

9. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS. Any written commitment by Contractor within the scope of this PA shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this PA. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options

committed to remain in force over a specified period of time, and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

10. PROTECTION OF PURCHASER'S CONFIDENTIAL INFORMATION.

- 10.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this PA or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes ("Confidential Information"). Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this PA, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this PA, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors reasonably necessary to further the purpose of this PA. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- 10.2 Immediately upon expiration or termination of this PA, Contractor shall, at Purchaser's or DIS' option: (i) certify to Purchaser or DIS that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser or DIS requires of Contractor to protect Purchaser's Confidential Information.
- 10.3 DIS and Purchaser reserve the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this PA. Any such monitoring, auditing or investigation will be conducted pursuant to reasonable security and confidentiality terms specified by Contractor. Access to Contractor's information technology systems and any Proprietary Information shall be granted only to the degree such access is reasonably necessary for DIS or Purchaser to determine Contractor's compliance with its obligations under this section.
- 10.4 Violation of this section by Contractor or its Subcontractors may result in termination of this PA and demand for return of all Confidential Information, monetary damages, or penalties.
- 10.5 The obligations imposed by this PA shall not apply to any information that: (a) is already in the possession of, is known to, or is independently developed by Contractor; or (b) is or becomes publicly available through no fault of Contractor; or (c) is obtained by Contractor from a third person without breach by such third person of an obligation of confidence with respect to the Confidential Information disclosed; or (d) is disclosed without restriction by the Purchaser; or (e) is required to be disclosed pursuant to the lawful order of a government agency or disclosure is required by operation of the law.

11. PUBLICITY.

- 11.1 The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's Services by Purchasers and shall not be so construed by Vendor in any advertising or other publicity materials.
- 11.2 Contractor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this PA and Services furnished by Contractor wherein DIS' or Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of DIS' or Purchaser's name therewith may, in DIS' or Purchaser's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS *prior* to such use.
- 11.3 Nothing contained in this Section, however, shall be construed to apply to the following: Communications among Purchasers or communications between Purchasers and other agencies and branches of the Washington State Government; and posting by DIS of a copy of this contract

on its website(s), together with a notation identifying Vendor as a supplier for the Services.

12. INSURANCE COVERAGE.

- 12.1. Contractor shall, during the term of this PA, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington
- 12.2. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this PA, Contractor shall provide written notice of such to DIS within thirty (30) Business Days of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS' sole option, result in this PA's termination.
- 12.3. The minimum acceptable limits shall be as indicated below:
- Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
 - Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
 - Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
 - Umbrella policy providing excess limits over the primary policies in an amount not less than \$1 million;
- 12.4. Contractor shall pay premiums on all insurance policies. Such insurance policies certificate(s) shall name DIS as an additional insured on all general liability, automobile liability and umbrella policies. Such insurance certificates shall also reference the Master Agreement number AR-1466 and this PA number T08-MST-887, and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer.
- 12.5. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State subject to the hold harmless/ indemnification agreements under this PA and shall include a severability of interests (cross-liability) provision.
- 12.6. Contractor shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- 12.7. Contractor shall furnish to DIS copies of certificates of all required insurance within thirty (30) calendar days of this PA's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the first business day in the month of April for each successive year that this PA or the Master Agreement is in full force and effect. Failure to provide evidence of coverage may, at DIS' sole option, result in this PA's termination.
- 12.8. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the State in this PA.

13. INDUSTRIAL INSURANCE COVERAGE. Prior to performing work under this PA, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this PA. DIS or Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and Services under this PA.

14. WAIVER. Waiver of any breach of any term or condition of this PA shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this PA shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

15. DISPUTES.

- 15.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Contractor and it cannot be resolved between the parties, or with the help of the Master Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 15.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within five (5) business days. The initiating party shall have five (5) business days to review the response. If after this review a resolution cannot be reached, both parties shall have five (5) business days to negotiate in good faith to resolve the dispute.
- a) If the dispute cannot be resolved after five (5) business days, a panel ("Dispute Resolution Panel") may be requested in writing by either party who shall also identify the first panel member. Within five (5) business days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next five (5) business days.
 - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
 - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 15.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- 15.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible
- 15.5. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this PA that are not affected by the dispute.
- 15.6. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

16. DIS ADMINISTRATIVE FEE. All purchases made under this PA are subject to a fee ("DIS Administration Fee"), to be collected by Contractor and remitted to DIS. The DIS Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total invoice price less sales tax. The DIS Administration Fee shall be invoiced by Contractor to all Purchasers as a separate detailed line item on Purchaser's invoice. Contractor shall remit the DIS Administration Fee directly to the Master Contract Administrator, along with the PA Activity Report. The check shall be payable to the Department of Information Services.

17. DIS NOTIFICATION. Within three (3) days of receipt of any inquiry from any other Washington State agency regarding possible purchase under this PA, Contractor shall provide the DIS Master Contract Administrator (see Section 3 of this PA) with notice including details of the inquiry, the name of the agency and the contact person for the agency. No notice to DIS is required for inquiries or Orders received from Washington educational entities or counties, cities or their political subdivisions.

18. DIS ACTIVITY REPORTING.

- 18.1. Contractor shall submit to the Master Contract Administrator a quarterly report ("Activity Report") of all Product and/or Service purchases made under this PA. Quarterly reports are to be

broken down by each month being reported. The Activity Report shall identify:

- a) The Participating Addendum (T08-MST-887);
- b) Each Purchaser making purchases during that quarter;
- c) The total invoice price, excluding sales tax for each Purchaser;
- d) The DIS Administration Fee for each Purchaser;
- e) The sum of all invoice prices, excluding sales tax, for all Purchasers; and
- f) The sum of all DIS Administration Fees.

18.2 The Activity Reports and the DIS Administration Fee shall be due on a quarterly basis in accordance with the following schedule:

<u>For activity in the months:</u>	<u>Report & Fee Due:</u>
January, February, March	April 15 th
April, May, June	July 15 th
July, August, September	October 15 th
October, November, December	January 15 th

18.3 This Activity Report may be corrected or modified by the Master Contract Administrator with subsequent written notice to Contractor. Quarterly Activity Reports are required even if no activity occurred. Upon request by DIS, Contractor shall provide, in the format requested, the contact information for all Purchasers during the term of the PA.

19. FAILURE TO REMIT REPORTS / FEES. Failure of Contractor to remit the Activity Report together with the DIS Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DIS terminating this PA with Contractor.

20. INVOICE / PAYMENT.

20.1. Contractor will submit properly itemized invoices to each Purchaser within forty-five (45) days of delivery of Products and/or Services at the address(es) indicated in the Order Document. Invoices shall provide and itemize, as applicable:

- a) The Master Price Agreement number, AR-1466 and Participating Addendum number, T08-MST-887;
- b) Purchaser's name and address and Order Document number;
- c) Contractor name, remittance address, phone number, e-mail address, fax number and Federal Taxpayer Identification Number;
- d) Description of Products, including price, quantity ordered, model and serial numbers;
- e) Date(s) of delivery and/or date(s) of installation and set up;
- f) Price for each item, or manufacturer's list price for each item and applicable discounts;
- g) Description of Services provided, including dates;
- h) Net invoice price for each item;
- i) Applicable taxes;
- j) DIS Administration Fee (0.5% or 0.005 of the total purchase price);
- k) Other applicable charges;
- l) Total invoice price; and
- m) Payment terms including any available prompt payment discounts.

- 20.2. Payment is normally made within thirty (30) days following the date the Order is received or the date a correct invoice is received, whichever is later. After forty-five (45) days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments may be remitted by mail, or via electronic funds transfer. Payments may be made via a Purchasing Entity's "Purchasing Card."
- 20.3. Payments for maintenance Services may be made in advance on a quarterly or annual basis, at Purchaser's option. Payment of maintenance Services of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.

21. TERMINATION FOR NON-APPROPRIATIONS. If funds are not allocated to a Purchaser to continue a maintenance agreement, Purchaser may terminate its maintenance agreement upon thirty (30) days' written notice to Contractor without termination charges, or otherwise work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser agrees to notify Contractor in writing of such non-allocation at the earliest possible time. This section shall not be construed to permit a Purchaser to terminate its maintenance agreement in order to acquire similar Services from a third party.

22. GOVERNING LAW. This PA shall be governed in all respects by the law and statutes of the State of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the State of Washington, said statute will not govern any aspect of this PA or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the State of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

23. VENDOR'S PROPRIETARY INFORMATION. Contractor acknowledges that DIS and Purchaser are subject to chapter 42.56 RCW and that this PA shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be proprietary ("Proprietary Information") must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, DIS and Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, DIS or Purchaser will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DIS or Purchaser will release the requested information on the date specified.

STATE OF UTAH - STATE COOPERATIVE CONTRACT

CONTRACT NUMBER AR-1466

1. **CONTRACTING PARTIES:** This State Cooperative Contract is between the **Division of Purchasing and General Services**, an agency of the State of Utah, and the following **CONTRACTOR**:

Alcatel USA Marketing Inc.
Name
3400 Plano Parkway Mail Stop SS01
Address
Plano TX 75075
City State Zip

LEGAL STATUS OF CONTRACTOR

- Sole Proprietor
 Non-Profit Corporation
 For-Profit Corporation
 Partnership
 Government Agency

Contact Person: Dan Holden Phone #509-879-8694 Fax # 509-466-2662 Email Dan.Holden@alcatel.com
Federal Tax ID# [REDACTED] Vendor #94826A Commodity Code #20464, 20623 & 20621

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this contract is to provide:

WSCA Contract to provide Data Communications Equipment Associated OEM Maintenance and Training per RFP #DG7500.

3. **CONTRACT PERIOD:** Effective date: June 1, 2007 Termination date: May 31, 2010 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): 2 -(2) year.

4. **PRICING AS PER THE ATTACHMENT** Discounts
PAYMENT TERMS: Net 30
DAYS REQUIRED FOR DELIVERY: Varies by Product Line
MINIMUM ORDER: None
FREIGHT TERMS: F.O.B. Destination - Freight Prepaid

5. **ATTACHMENT A:** Addendum 1 and Exhibit A
ATTACHMENT B-1: WSCA Terms and Conditions
ATTACHMENT B-2: Changes to WSCA Terms and Conditions
ATTACHMENT C: N/A

6. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid #DG7500 dated 9/4/06.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

[Signature]
Contractor's Signature
June 1, 2007
Date

STATE OF UTAH

[Signature]
Douglas G. Richins
Director, Div. of Purchasing & General Svs.
6-7-07
Date

John Garcia, Director of Contracts
Type or Print Name and Title

Attachment B-1: WSCA Terms and Conditions

Standard Contract Terms and Conditions

Western States Contracting Alliance

Request for Proposal

Note: For the contract with Alcatel and the State of Utah, changes have been made to the following terms: 13, 21, and 26. The changes are listed in Attachment B-2.

1. PARTICIPANTS: The Western States Contracting Alliance (herein WSCA) is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Obligations under this contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.

2. QUALITY ESTIMATES: WSCA does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for the purposes of submitting proposals only and are not to be construed as a guarantee to purchase any amount.

3. SPECIFICATIONS: Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the RFP states "No substitute". Proposals will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

4. ACCEPTANCE OR REJECTION OF PROPOSALS: WSCA reserves the right to accept or reject any or all proposals or parts of proposals, and to waive informalities therein.

5. SAMPLES: Generally, when required, samples will be specifically requested in the Request for Proposals. Samples, when required, are to be furnished free of charge *based on agreement from both parties*. Except for those samples destroyed or mutilated in testing, samples will be returned at a offeror's request, transportation collect.

6. CASH DISCOUNT TERMS: Offeror may quote a cash discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

7. TAXES: Proposal prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

8. MODIFICATION OR WITHDRAWAL OF PROPOSALS: Proposals may be modified or withdrawn prior to the time set for the opening of proposals. After the time set for the opening of proposals no proposal may be modified or withdrawn, unless done in response to a request for a "Best and Final Offer" from WSCA.

9. PATENTS, COPYRIGHTS, ETC.: The Contractor shall release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

10. AWARD: WSCA may award multiple contracts as the result of this solicitation. Awards shall be made to the responsible offeror(s) whose proposal is determined to be the most advantageous to WSCA, taking into consideration price and the other evaluation factors set forth in the RFP.

11. NON-COLLUSION: By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Request for Proposal, designed to limit independent bidding or competition.

12. CANCELLATION: Unless otherwise stated in the special terms and conditions, any contract entered into as a result of this bid may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or

default in performance in association with any order. Cancellation of the contract due to Contractor default may be immediate.

13. DEFAULT AND REMEDIES: Any of the following events shall constitute cause for WSCA to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract WSCA shall issue a written notice of default providing a period in which Contractor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, WSCA may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages; 4. Suspend contractor from receiving future proposal solicitations.

14. LAWS AND REGULATIONS: Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

15. CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions which follow; the special terms and conditions shall govern.

16. REPORTS: The contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each agency.

17. HOLD HARMLESS: The contractor shall release, protect, indemnify and hold WSCA and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

18. ORDER NUMBERS: Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

19. GOVERNING LAW: This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of an Participating Addendum shall be in the Purchasing Entity's State.

20. DELIVERY: The prices offered shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance (*within 21 days after delivery for external damage and 30 days for any concealed damage*) when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

21. WARRANTY: As used herein "Buyer" refers to any WSCA state agency or political subdivision. The contractor acknowledges that the Uniform Commercial Code applies to this contract. In general, the contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any *special purposes* that the Buyer has relied on the contractor's skill or judgment to consider.

22. AMENDMENTS: The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA Contract Administrator.

23. ASSIGNMENT/SUBCONTRACT: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA Contract Administrator.

24. NONDISCRIMINATION: The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this

provision in very subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

25. SEVERABILITY: If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

26. INSPECTIONS: Goods furnished under this contract shall be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or in compliance with proposal specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

27. PAYMENT: Payment for completion of an contract is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card".

28. FORCE MAJEURE: Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. WSCA may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

29. HAZARDOUS CHEMICAL INFORMATION: The contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

30. FIRM PRICE: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of proposal opening. Prices must remain firm for the full term of the contract.

31. EXTENSION OF PRICES: In the case of error in the extension of prices in the proposal, the unit prices will govern.

32. PROPOSAL PREPARATION COSTS: WSCA is not liable for any costs incurred by the offeror in proposal preparation.

33. CONFLICT OF INTEREST: The contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to being awarded this contract.

34. INDEPENDENT CONTRACTOR: The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

35. POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the WSCA participating states shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

36. DEBARMENT: The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by WSCA.

37. RECORDS ADMINISTRATION: The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this contract. These records will be retained by the contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

38. AUDIT OF RECORDS: The contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to this contract, for audit and inspection, and monitoring of services. *The scope of audits would be within the context of the contract.* Such access will be during normal business hours, or by appointment.

Revision date: September 14, 2006

Attachment B-2 Changes to WSCA Terms and Conditions

The State of Utah ("State" or "Customer") and Alcatel USA Marketing, Inc. ("Alcatel" or "Contractor") agree to the following changes to the WSCA Standard Terms and Conditions:

The WSCA Standard Terms and Conditions will be revised as follows:

A. Add the following language to the end of section B of Term 13, "Default and Remedies":

"The opportunity to cure mentioned in this paragraph shall be 15 days from receipt of notice of default."

B. Add the following language to section C of Term 13, "Default and Remedies":

"The amount of the liquidated damages, if any, must be agreed upon in writing by the parties to the contract."

C. Add the following language to the end of Term 21, "Warranty":

"Notwithstanding the foregoing, Contractor's Warranty disclaimers contained in sections 13 and 14 of Contractor's General Terms and Conditions of Sale, as revised in Exhibit A of this Attachment, shall apply to this contract."

D. The following changes will be made to Term 26, "Inspections Provision":

Replace the first, second, and third sentences of the section with the following:

"Goods furnished under this contract shall be subject to inspection and test by the Purchasing Entity at times and places as determined by the Purchasing Entity and agreed to by Contractor, such agreement not to be unreasonably withheld. If the goods furnished are incomplete or not in compliance with proposal specifications, the Purchasing Entity may reject the goods in accordance with the Warranty provisions and return policies contained in this Contract. If Contractor is unable or refuses to correct such goods within the Warranty provisions and return policies contained in this Contract, the Purchasing Entity may cancel the order in whole or in part."

ATTACHMENT A ADDENDUM 1

This Addendum serves to clarify terms and conditions of the contract between the State of Utah, referred to as STATE, and Alcatel USA Marketing, Inc. referred to as Contractor. The State of Utah is acting as the Lead State for the procurement process resulting in **WSCA Contracts for Data Communications Equipment, associated OEM Maintenance and Training.**

A. Manufacturer Product Line(s)

This contract authorizes the Contractor to provide the following manufacturer's Data Communications Equipment, Maintenance, and Training, as listed by category. No other equipment or maintenance will be covered under this contract, unless identified in an amendment to the contract. Products covered under this agreement are:

Routers: Alcatel
Switches: Alcatel
LAN/WAN Wireless: Alcatel
CSU/DSU: Alcatel
Security: Alcatel
Telephony: Alcatel
Network Management Software: Alcatel
Optical Transport: Alcatel
Training and Maintenance for Above Products: Alcatel

B. State of Utah/WSCA Contract Manager

Debbie Gundersen
State of Utah
Division of Purchasing and General Services
State Office Building, Capitol Hill
Room 3150
Salt Lake City, UT 84114-1061

email: dgundersen@utah.gov
Voice: (801) 538-3150
Fax: (801) 538-3882

C. Remittance Address

P,O, Box 911476
Dallas, TX 75391

D. Special Terms and Conditions

The parties agree to amend the terms and conditions as follows:

1. Order of Precedence

The order of precedence for the contract terms will be as follows:

 1. Attachment B-2: Changes to WSCA Terms and Conditions
 2. Attachment B-1: WSCA Terms and Conditions
 3. State of Utah Contract Signature Page (Cover Page)
 4. Attachment A: Addendum I
 5. Contractor's Terms and Conditions, if applicable
 6. Contractor's Response to BAFO for RFP DG7500, incorporated by reference
 7. Contractor's Response to RFP DG7500, incorporated by reference
 8. RFP DG7500, incorporated by reference
2. Included Documents

The documents listed in Number 1 are included in the contract. It is agreed that any reference to the "Entire Agreement" includes these documents.
3. Public Information

The contract, including the price lists and the Response to the RFP, will be considered public documents and will be subject to government records policies in each state. The Contractor gives the STATE express permission to make copies of the information specified to provide to other STATE government entities that may use the contract, and to the public, in accordance with general STATE policies, including copies of said information that may be identified as confidential, proprietary, or copyrighted.
4. Arbitration

The STATE will not accept mandatory, binding arbitration. If there are any references to binding arbitration in the Contractor's Response to the RFP, they will be null and void. The parties may agree, on a case by case basis, to voluntary arbitration to resolve contract issues.
5. Contract Period

The contract period, including renewal options, is listed on the STATE OF UTAH - Statewide Contract cover page. Renewals will be agreed to upon written authorization from both parties. All references to automatic renewals will be null and void.
6. Governing Law

This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the State of Utah. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim,

dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.

7. Revisions to Contractor's Response to the RFP

The Contractor's Response to the RFP will be revised as follows:

The Contractor's General Terms and Conditions of Sales are modified as shown in Exhibit A of this Attachment.

E. Contractor Requirements

1. Contractor Responsibility

Contractor is solely responsible for fulfillment of the responsibilities under the terms and conditions of the contract. The procuring agencies will issue purchase orders and make payments to only the named contractors or their respective resellers.

2. Serving Subcontractors

If using servicing subcontractors for the performance of local marketing, maintenance and/or technical support services in accordance with the terms and conditions of the contract, servicing subcontractors may not directly accept purchase orders or payments for products or services from procuring agencies under the terms and conditions of the contract. The authorized procuring agency has the option of choosing whether to purchase the associated OEM maintenance and/or training to support the equipment purchased.

3. WSCA Administration Fee

The contractor must pay a WSCA administration fee of one half of one percent (.50%) in accordance with the terms and conditions of the contract. The WSCA administration fee is not negotiable.

4. Usage Reporting Requirement

Contractor must submit quarterly usage reports to the contract manager. Initiation and submission of the quarterly report is the responsibility of the contractor without prompting or notification by the contract manager. The due dates of each quarterly contract usage report are April 30, July 31, October 31 and January 31. Quarterly usage reports must contain total dollar usage figures for each WSCA member-state (and non-member state), per product category, per manufacturer, respectively. Usage figures must be provided per maintenance option.

5. Change in Contractor Representatives

The State of Utah/WSCA reserves the right to require a change(s) in contractor representatives if the assigned representative(s) is not, in the opinion of the State of Utah's contract manager, meeting its needs adequately.

6. Website Development and Maintenance

Contractor must maintain said website and keep the information current and correct on a timely basis.

7. Rollout and Marketing

Contractor may conduct a marketing effort as described in Contractor's proposal.

8. Right to Publish

Contractor must secure prior approval from the contract manager for permission to release any information that pertains to the potential work or activities relating to this contract. Failure to adhere to this requirement may result in termination of the contract for cause.

9. Contractor's Scope of Equipment and Services

Contractor may only fill contract orders from the scope of equipment and services under contract. Any sale made under this contract by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described in Section E may result in contract termination for cause.

10. E-Rate Requirement

Contractor must participate in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the contractor.

11. Freight Terms of Sale F.O.B. Destination, Freight Prepaid

Contractor will ship all products F.O.B. destination, freight included in the product price. Contractor may not include freight charges on invoicing. Failure to comply with this requirement may result in contract termination for cause.

Whenever a procuring agency does not accept any product and returns it to the contractor, all related documentation furnished by the contractor shall be returned also. The contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the procuring agency. Contractor is responsible for the pick-up of returned equipment.

12. Price Guarantee Period

Percentage discount depth from list is not subject to a "price increase request" that would result in a less attractive discount; discounts may only be adjusted by the contractor to reflect a deeper discount(s). The discount is applied to manufacturers current published list price schedule(s).

Maintenance and any training related costs are also guaranteed for the entire contact.

13. Product Revision Requests
Contractor must submit updated price list(s) upon publication, or any other product model changes, addition of new products, product upgrades or services in a timely manner.

Contractor agrees to delete obsolete and discontinued products from the contract price list(s) on a timely basis. Major product model changes will be incorporated into the contract as soon as possible after product introduction, to be offered at the same rate of discount for the appropriate price list and its discount.

14. Maintenance of Current Price List with Discount(s) Applied
Manufacturer's price list(s) must be tailored for WSCA with the WSCA contract discount(s) applied; this must be created and maintained by the contractor on an Internet website hosted by the contractor, at no additional charge(s) to the State of Utah or WSCA. This website will be listed as a link from the WSCA website.

F. Contract Scope of Equipment and Related Services

Any sale by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described below (or included in Section A above) may result in contract termination for cause.

[Note: The following is an outline of information to be included in this section.]

1. Discounts of Manufacturers Price List
a. Pricing Discounts

OmniAccess 4000, 5000, 6000	30% off list
OmniStack 6200	47% off list
OmniSwitch 6000,7000, 9000	43% off list
OmniPCX 4400	42% off list
7250 Routers	25% off list
7450, 7750 Routers	40% off list
5620 Management Platform	30% off list
DMX 1000	70% off list
Brick Firewall and VPN	0% off list
Vital Suite Software	50% off list

2. Resolution of Customer Problems

3. Support Services:

- 4.

Alcatel field engineering support is provided in all WSCA member states. The Field Manager contact information is as follows:

*Joseph Muhitch
Manager, North America Services
Alcatel ESD/NIBU
949 William Penn Court
Pittsburgh, PA 15221
412-243-6291 (office)
412-243-7291 (fax)
412-527-1616 (mobile)
joseph.muhitch@alcatel.com*

Support programs available from Alcatel include the following levels of service. Please note the highlighted "Service Availability" bullet under each program level.

▼ ***SUPPORTplus Program***

SUPPORTplus customers have access to our technical response center 7 days a week, 24 hours a day, with no restriction on the number or qualification of the customer's personnel eligible to place telephone calls to report product-related questions or problems. Customers under SUPPORTplus service shall have priority over callers requesting technical support under standard warranty. Total hold time before speaking directly to a support engineer currently averages less than one minute. North American technical response centers are in and Los Angeles, CA.

- *Service Availability: All US locations.*
- *7 x 24 remote diagnostics: SUPPORTplus customers will receive TELNET and dial-in assistance from certified AIS support engineers. Remote access allows one of our technical experts to perform "in-box" diagnostics 24 hours a day. Real-time access to configuration parameters, hardware and software revision levels, and port statistics will allow our network engineer to quickly resolve technical issues.*
- *Web services: Obtain an e-service login and access the contracted customer service Web page. Web services include: access to your own and your companies support cases, return material authorizations, on-line problem escalation, known-problem reports, release notes, troubleshooting guides, and software.*
- *Software updates: Regular software updates protect your company's equipment investment and maximize the effectiveness of your hardware. This program provides software updates including monthly maintenance releases, patch releases, and enhancements.*
- *Advanced hardware replacement: We will ship a replacement hardware component to the site designated by the customer for arrival on the next business day. Alcatel even pays for return shipping.*

▼ ***SUPPORTbasic Program***

The SUPPORTbasic service program includes access to 7 x 24 technical support, 7 x 24 remote diagnostics, web access, repair and return of hardware within 10 business days from time of receipt, and the software updates features of SUPPORTplus. For products that carry a Limited Lifetime warranty, advanced replacement is provided within 5 business days of date of request.

- *Service Availability: All US locations.*

▼ ***SUPPORTtotal Program***

SUPPORTtotal is an annual maintenance program with all the features of SUPPORTplus as well as 4- hour on-site replacement of network hardware components (passive chassis excluded). Seven days a week, 24 hours a day, Alcatel will dispatch a certified service engineer to arrive on site within four hours of diagnosis.

- *Service Availability: Most US locations – please contact for availability in a specific area.*

In order to best serve all procuring agencies purchasing off the WSCA contract and provide the widest possible range of support availability, Alcatel can partner with the following resellers to provide local service.

IBM:

Last	First	Title	Phone	Email	Address	Coverage
Jones	Gerlene	Global Technology Services West Public Sector Principal	602-217-2887	gjones@us.ibm.com	2929 N Central Ave, Phoenix AZ, 85012-2727	
Henderson	Greg	Sales, Public Sector Western Region	602-614-5179	greghen@us.ibm.com	2929 N Central Ave, Phoenix AZ, 85012-2727	ID, MT, NV, UT
Bentley	Vic	Global Technology Services Cluster Leader, Texas Public Sector	972-280-1040	vbentley@us.ibm.com	1503 LBJ Freeway, Dallas TX, 75234-6059	AZ, CO, NM, W
St. Onge	Thomas	Global Technology Services Public Sector Principal	206-686-4397	stonget@us.ibm.com	1200 5th Ave, Seattle WA, 98101-3132	TX
Lawler	Kevin	Global Technology Services Public Sector Specialist	858-587-5019	lawlerke@us.ibm.com	11047 Cloverhurst Way, San Diego CA, 92130	WA, OR
Jim	Cannon	Global Technology Services Public Sector Sales Specialist	816-556-6074	cannonja@us.ibm.com	2345 Grand, Kansas City MO, 64108	HI KS, MO

Power Engineers:

Last	First	Title	Phone	Email	Address	Coverage
Gould	Rod	Area Director	208-685-6249	rgould@powereng.com	1295 S. Eagle Flight Way, Boise ID, 83709	NE,KS,MN,IA,IL WS,MI,IN,OH, KY
Ruwet	Stu	Area Director	303-716-8936	stu.ruwet@powereng.com	3900 S. Wadsworth Blvd. #700, Lakewood CO 80235	NM,TX,LA,OK,A R,MO
O'Donnell	JP	Area Director	425-941-9429	jp.odonnell@powereng.com	3900 S. Wadsworth Blvd. #700, Lakewood CO 80235	HI, WA, OR, ND, SD, AZ, CA, UT, WY, MT, AK, ID NV, CO

Offerors must thoroughly describe their procedures for resolving customer problems and complaints including timelines and escalation measures.

Alcatel Response: Read, understood and comply. Alcatel Professional Services offers superior installation and other support services, and our training offerings can be tailored to meet virtually any technical education requirement, relevant to the products and technology we are proposing, that a member state procuring agency may require.

Professional Services personnel are located in several states, selected for this group more for their ability and experience than location. Regardless of the project, it is understood that they may have to travel, and in fact usually do in the activities related to an assignment. Alcatel is able to offer our full array of Professional Service offerings to any procuring WSCA entity. Please refer to the Product & Services Delivery Map at the end of Section IV.

The engineers that work primarily on data are Alcatel Switch Expert certified and have an extensive background in all areas of data networking. This is a minimum requirement to be a part of Alcatel's Professional Services organization.

Alcatel offers full-service installation of their hardware products at the customer's site. A certified network engineer will assemble, configure, connect, and acceptance test your Alcatel switching equipment to ensure timely and fully functional operation of your new network.

Installation Services include:

- Perform a technical site readiness validation of the premises prior to installation
- Unpack and inventory all Alcatel switching hardware and documentation
- Mount hardware in designated racks
- Install network interface modules
- Connect external hardware necessary for functionality (i.e. modem, DSU/CSU, transceivers, etc.)
- Connect new networking equipment product to the existing network
- Power on all equipment
- Configure IP addresses
- Demonstrate connectivity using the TCP/IP PING command

The Alcatel service team will minimize installation time and unexpected problems by pre-configuring new equipment. Certified network engineers will stage your Alcatel switching equipment in our acceptance testing facility, verify configuration parameters and connectivity, and ultimately deliver a pre-configured and acceptance tested turnkey network.

Configuration and staging services include:

- Inspect all equipment at our acceptance testing facility

- Verify customer order
- Insert and connect system components
- Verify hardware and software revision levels
- Verify hardware operation by performing advanced diagnostics
- Generate configuration file
- Load, boot, and test system software
- Verify connectivity
- Label all cables and provide documentation to reassemble configuration
- Repack equipment for shipment to customer
- Arrange all shipping requirements

Alcatel offers a full suite of professional and support services to assist our customers in designing, implementing, and maintaining the most efficient and trouble-free network possible. Optional services available to Pace University include:

▼ ***Resident engineer services***

Hiring and retaining a certified network professional is a challenge for many information services organizations. Alcatel can help you successfully maintain your new switches by providing a full-time on-site certified network support engineer.

Services on our networking equipment include:

- *preventive maintenance of software and hardware*
- *network troubleshooting*
- *training of customer's technical staff.*

▼ ***Professional services***

There are two categories outlined below Network and Security services. The two categories have a Scoping Session service associated with them. This scoping session is a pre-requisite for any other service in their respective categories.

Network Services

- ***Network Scoping Session***

This service provides the first step for any Professional Service relating to data networks. Our Engineers will determine the scope and nature of work a customer wishes to perform, documents it completely, and produces a plan of how to proceed with the task.

Deliverables include the documentation of the current network as it relates to the project, identification of the customer's goals, and a specific plan to attack the problem and provide a solution.

This service has a fixed price of \$5,000 and includes 3 working days (24) hours of Engineer time. \$2,000 dollars of this price can be credited to follow-on services provided by Alcatel as a part of the same project. Travel within the continental United States is included in this price.

- ***Network Audit (AKA Network Baselineing or Network Measurement)***

This service provides a measurement of the current network's performance. It is intended to be a complete status report to serve as a base-line measurement of performance and as the input needed for growth or service planning.

The activities of the Engineer might include: quick-look at network with network monitoring equipment to find obvious problems and to help characterize network

behavior; installation of monitoring equipment at the customer location for a number of days to gather network statistics.

Customer deliverables consist of an extensive written report that contains the raw network performance statistics over a period of time, a summary of this data, observations of the Engineer and a drawing of the topology that was discovered and monitored. Pricing for this service varies with the project and is determined by the Network Scoping Session. The Network Scoping Service is a prerequisite for this service.

- ***Network Design***

This service is intended to cover a wide range of design activities. It represents any and all issues associated with designing a new capacity or service on an existing or new network. A Scoping Session always precedes it and sometimes a Network Audit is required.

This service requires a clearly stated "Gap" document that identifies the difference between the current network and the desired network that meets the customer's needs. This document is used to generate specific recommendations and an implementation plan.

The deliverables include specific recommendations to reach the customer's goals based on the Gap document and an implementation plan. Pricing for this service varies with the project and is determined by the Network Scoping Session. The Network Scoping Service is a prerequisite for this service. Travel within the continental United States is included in this price.

- ***Advanced Product Configuration and Installation***

This service entails the execution of an implementation plan, often provided by the Network Design Service. This includes Project Management related to this specific Implementation plan.

The tasks might include the configuration, on-site or remote, and installation/validation of Alcatel equipment. This service is focused on IND/Enterprise products. Deliverables include the installed equipment and configuration reports.

Pricing is determined during a Network Design or a Network Scoping Session and is specific to each job. Travel within the continental United States is included in this price.

Security Services

- ***Security Scoping Session***

This service provides Alcatel with the opportunity to collect information specific to the customer's network security needs. This service is intended as the information collection and documentation phase for follow-on security services pertaining to the customer's desired business goals as it relates to network security.

Deliverables include a specific report consolidating the customer's current network security posture and future network security goals. Typical information in the current security posture report includes a technology report focusing on the definition of local and remote user groups, remote access, authentication, firewall

and Internet requirements. Future network security goals often include application needs, issues pertaining to the cost, management, support and security of current systems, estimated budgeting information for future enhancements and desired changes in access points and methodology.

The price for this service is \$5,000 and includes 3 days (24 hours) of Engineer time. \$2,000 of this fee can be applied to future Alcatel services that are related to this service. Travel within the continental United States is included in this price.

- ***Network Security Quick-View***

This service provides an overview of a customer's network security. It is a process of topology and service discovery combined with a test of several security services (i.e. Firewalls). Our minimum technology focus is Firewalls and VPNs.

Deliverables include one or more data security audit reports, and recommendations.

Pricing is based on the number of IP address that is evaluated. An investigation of 1 to 10 IP addresses accessible from a remote Internet connection costs \$3,600. \$1,200 for each additional 10 IP addresses. If the devices to be investigated are not accessible remotely via an Internet connection the charges must be determined in a Security Scoping Session.

- ***Network Security Design***

This service evaluates the current network security posture of a customer, identifies weaknesses, risks, support issues, and produces recommendations to reduce security risks while enabling a customer to provide the desired services and meet current and future business goals.

Deliverables include a specific list of the customer's desired network security policy. It includes an identification of key network security devices as they relate to the customers current and planned services. An overview of the customer's network, remote access methods, services, authentication, firewall and Internet use are often required and included. Pricing for this service varies with the project and is determined by the Security Scoping Session. The Security Scoping Service is a prerequisite for this service.

- ▼ ***Project Management***

Alcatel Professional Services Engineers can provide project management for any customer project. This is to ensure the achievement of project objectives such as: Network functionality, Costs, Risks, Schedule, and Customer Satisfaction. The Program Manager is tasked to form and lead the project implementation team consisting of both Alcatel and Customer representatives.

Deliverables can include a staging of key network elements and features, installation and deployment plan, support and escalation procedures, procedures for customer acceptance and sign-off, and others. Pricing is specific to each job and is usually billed on a time and material basis. There is a minimum price of \$2,400 for one day of service with additional time at \$150 per hour.

- ▼ ***Network monitoring and supervision services***

Alcatel's Customer Network Operations Center (CNOC) provides proactive network supervision and monitoring services to enhance the reliability and efficiency of customer

networks. This service includes the following activities: 24 hr. x 365 day monitoring of network; Supervision of alarm states, traffic load and measurement parameters; a centralized point for fault detection and alarm collection of NMS/EMS messages; analysis of alarm and event messages to prevent potential future failure conditions; determining course of actions based on alarm severity and response requirements; provide quality parameters and analysis reports to operations management.

Pricing will be dependent on size of network and number of nodes to be managed. Final price will be determined by a member of Alcatel's Professional Services team.

▼ ***Customized Training***

As Alcatel has "State of the Art" resources on hand, we will perform this service at the highest level of quality available today. The training will provide an in depth session based on the desired network. This training is NOT to replace any of Alcatel's predefined training courses (as described in the Routing and Switching sections). This service is designed to train your site administrators/engineers on the Alcatel equipment and its supporting technologies by providing on-site "school-house" level training, teaching advanced troubleshooting techniques based on your network, and reviewing the associated technologies involved with your current network.

As we strive to deliver the highest quality service possible, during the initial kick off meeting, we will review your business goals. This initial review will allow Alcatel to better understand the context of the project and help ensure successful results. Some of the items that will be discussed during this meeting are:

- People involved and resources to be used;
- What will be needed for equipment to give you the best training possible
- Documentation associated with the class
- Class room availability
- Dates of availability for our services.

We will then work together to clearly define business needs and the desired outcome of the training session. Once the actual business needs have been defined, Alcatel will prepare the training material to meet the classroom objectives. Some of the typical materials that may be created are:

- Network Diagrams
- Configuration Worksheets
- Lab Assignments
- Course Workbooks
- Presentations

5. **Technical Services (Equipment Warranty, Installation, Training, Maintenance Options, Replacement**

Alcatel Response: For Alcatel Internetworking equipment, toll-free technical support is available 24 hours a day, 7 days a week. A maintenance agreement should be purchased for the corresponding products. If no maintenance agreement is purchased, Service Requests can be opened via a fee-based schedule. Please refer to the descriptions of SupportBasic, SupportPlus and SupportTotal for the processes involved in opening a Service Request.

Alcatel Response: Alcatel has an extensive portfolio of support services designed to increase network availability, reduce operational cost, develop Network Operations competencies, and provide valuable tools to manage all parties that play a role in the operation of your network. Alcatel provides its customers with support plans, from basic warranty coverage to complete hands-on technical and network engineering packages as outlined in the Services Overview attached to this RFP response.

Maintenance pricing is determined on the basis of the type and duration of the services requested and will be quoted on an individual request basis. Once desired services are determined and a price proposal generated, Alcatel requires a Purchase Order and a service contract signed by both the customer and Alcatel in order to initiate the requested service.

Alcatel Response: Standard Warranty

Alcatel warrants that, for the applicable warranty period of one (1) year or two (2) years for Equipment (depending on equipment type) and ninety (90) days for Software media, (a) Equipment and Software media shall, under normal use and service, be free from defects in material and workmanship, and (b) Equipment and Software shall materially conform to Alcatel's specifications therefore in effect on the date of shipment. **HOWEVER, ALCATEL MAKES NO WARRANTY THAT ANY SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE.**

During the initial warranty period, Alcatel will, at no charge, repair or issue a replacement for any defective part or component returned to its manufacturing facility. Alcatel's Repair and Return Facility is accessible to the customer around-the-clock, 24 x 7, 365 days a year. During these hours, the facility accepts R&R requests and provides return information. Requests are processed within the next 8 business hours, 8 am – 5 pm CST, Monday through Friday.

Some of the parts, components and subassemblies that make up the equipment may not be manufactured by Alcatel. For such items, Alcatel agrees in lieu of its warranty obligation described above to pass through to the customer, to the maximum extent possible, the warranty provided by the manufacturer of the part, component or subassembly.

Alcatel shall have no obligation to remedy any defect if it can be shown that:

- the equipment or software was altered, repaired, or reworked by any party other than Alcatel without Alcatel's written consent;
- such defects were the result of the customer's improper storage, mishandling, abuse, or misuse of the equipment or software;
- such defects were the result of the customer's use of the equipment or software in conjunction with equipment electronically or mechanically incompatible or of an inferior quality; or
- the defect was the result of damage by fire, explosion, power failure, or any act of nature.

Alcatel is not obligated to provide on-site maintenance as part of the standard product warranty. If required, this service may be added to the complete Service Level Agreement outside of the definition of Warranty.

Due to the complexity of all software packages and severity of the individual problem, Alcatel cannot provide a definitive time schedule for problem resolution. Alcatel will,

however, make a reasonable effort to resolve problems in accordance with TL 9000 service level targets for Critical, Major and Minor events.

5. Servicing Sub-Contractors (Resellers)

A list of the Servicing sub-contractors will be posted on the WSCA Website at www.aboutwsca.org and on the Contractor's network website. This list will be updated as changes are made.

Exhibit A to Attachment A
GENERAL TERMS AND CONDITIONS OF SALE

1. **Acceptance:** These General Terms and Conditions of Sale, together with information contained in Seller's written product order acknowledgment and/or invoice (and any additions or revisions mutually agreed to in writing by Seller and Buyer), shall constitute the entire agreement and understanding of Seller and Buyer with respect to the purchase and sale of Seller's products, superseding all prior oral or written understandings relating thereto. If Buyer's order contains provisions different from or inconsistent with the provisions hereof, these terms and conditions shall prevail. Buyer's acceptance of delivery of or payment for any products or services provided hereunder, or Buyer's signature below, shall constitute Buyer's acceptance of all terms and conditions herein.
2. **Terms of Payment:** Unless otherwise stated on Seller's acknowledgment and/or invoice, Buyer shall pay all amounts due for products purchased hereunder in cash within thirty (30) days from the date of Seller's invoice, provided that in the event Seller reasonably deems Buyer's financial status unsatisfactory or Buyer is in default of any obligation of Buyer to Seller, Seller (without prejudice to any other rights or remedies it may have) may require payment in full of all amounts payable to Seller by Buyer under Seller's invoice or otherwise prior to shipment of any products thereunder. Buyer shall pay as additional interest or service charge an amount equal to one percent (1%) of the unpaid balance per month (or portion thereof), or if less, at the highest interest rate permitted to be owed by Buyer to Seller for any reason whatsoever.
3. **Prices:** Unless otherwise expressly indicated in writing by Seller, prices for all products are as noted on Seller's price list as in effect on date of shipment. All prices are based on quantity indicated and are F.O.B. destination, unless otherwise indicated on Seller's acknowledgment and/or invoice. All costs of shipping, delivery, and insurance are included in the price of the products, unless expedited shipping is requested. If shipping is expedited, buyer shall pay the additional costs of shipping incurred.
4. **Taxes:** Prices do not include any tax or other governmental charge or assessment on the sale, shipment, production or use of any products sold to Buyer hereunder. Such taxes and charges, when applicable, may appear as separate additional charges on Seller's invoice. Buyer shall be solely responsible for, and shall pay to Seller upon demand, any such tax, charge or assessment, unless Buyer has furnished to Seller a valid certificate issued by or acceptable to the tax authority in question.
5. **Export Laws and Regulations:** Any obligation of Seller to provide products shall be subject in all respects to all United States laws and regulations governing the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States. Buyer shall not export, directly or indirectly, any products or related information without first obtaining all required licenses and approvals from the appropriate government agencies.
6. **Buyer's Materials:** Buyer represents and warrants that any and all materials or other items furnished by or on behalf of Buyer to Seller for use in connection with production of Seller's products will be Buyer's exclusive property, free and clear of all liens, claims and encumbrances whatsoever. Unless otherwise indicated on Seller's acknowledgment and/or invoice, Buyer shall bear all costs of delivering such materials and items to Seller's production facility. Seller shall be liable for any loss, destruction or damage of any such materials or items while in Seller's possession to the extent (but only to the extent) caused solely by Seller's negligence, subject to the limitation on Seller's liability described in Section 14 below.
7. **Delivery:** Seller shall make every reasonable effort to effect shipment on or before the scheduled shipping date(s) reflected on Seller's acknowledgment and/or invoice, but such schedule may vary due to, among other things, conditions beyond Seller's reasonable control, including, but not limited to, Seller's receipt of all materials and information to be supplied by Buyer. If no shipping date is specified, shipment will be made on date(s) selected by the Seller. In no event shall Seller be liable for any damages or penalties for delay in delivery or for failure to give notice of delay. Seller will make reasonable efforts to give notice of delay to Buyer. Delivery may be made within a time period reasonably in advance of any scheduled delivery date.
8. **Packing and Shipment:** Unless preferred packing method is noted on Seller's acknowledgment and/or invoice, all items will be packed for shipment in accordance with Seller's standard practice. Unless otherwise specified on Seller's acknowledgment and/or invoice, Seller will ship by the most appropriate method. Any and all claims by Seller for damage or loss of products in transit shall be made by Seller against the carrier.
9. **Title:** Subject to Section 12 below, title to all products sold by Seller to Buyer shall pass from Seller to Buyer when such products are delivered to Buyer's destination. However, if Buyer should fail to pay when due any amount Buyer owes to Seller on account of such products, Seller shall have, in addition to any other rights of Seller, the right (without liability of Seller) to repossess such products or to require Buyer to effect (at Buyer's expense) return delivery of such products to Seller. In addition, until Buyer has paid to Seller the entire amount due to Seller for such products, Seller shall retain a security interest in such products in the amount of the full purchase price plus all other amounts due hereunder and all costs of collection incurred by Seller (including but not limited to court costs and reasonable attorney's fees), and Seller shall retain all rights and remedies of a secured party under the Uniform Commercial Code as in effect at the time of delivery of such products. A copy of Seller's invoice may be filed with the appropriate authorities at any time as a financing statement or chattel mortgage in order to perfect Seller's security interest. Upon the request of Seller, Buyer will execute any financing and other documents or instruments necessary or appropriate in order for Seller to perfect its security interest.
10. **Risk of Loss:** All risk of loss or damage to products sold by Seller to Buyer hereunder shall be assumed by Buyer upon delivery of such products to the Buyer's destination.
11. **Inspection by Buyer:** Buyer shall carefully inspect all deliveries of products as they are received by Buyer and report to Seller promptly (but in any event within ten (10) calendar days after receipt of shipment) any alleged error, shortage, defect or nonconformity of such products. Any failure by Buyer to so inspect and report shall constitute a waiver by Buyer of any claim or right of Buyer against Seller arising with respect to any such error, shortage defect or nonconformity which was reasonably discoverable by such an inspection.
12. **Software License:** Upon acceptance of and payment for any software and/or documentation shipped by Seller to Buyer, and subject to the terms and conditions hereof, Buyer shall have a worldwide, nonexclusive, nonassignable, nontransferable license to use such software and/or documentation. Buyer may make one (1) copy of the software for back-up and disaster recovery purposes only. The license set forth in this Section 12 shall terminate immediately upon Buyer's discontinuance of the use of the equipment on which the software is installed. Buyer understands and agrees that title to, and all rights of ownership in, any such software and/or documentation shall at all times remain with Seller and relevant third parties.
13. **Warranty:** Seller warrants only to Buyer that its hardware products shall be free from material manufacturing and materials defects under conditions of normal use for a period of twenty-four (24) months from shipment by Seller to Buyer. Seller's products obtained from Seller which do not comply with the above warranty and are returned by Buyer to Seller during the warranty period (as shown by appropriate documentation) will be repaired or replaced at Seller's option, at no cost to Buyer. Buyer will bear the cost of freight and insurance of returned Seller's products, and Seller shall bear the cost

of freight and insurance of repaired Seller's products. All returned products must be in the original, or substantially similar, packaging and container and shall conspicuously bear the RMA number Buyer obtains from Seller prior to return. If Seller cannot, or determines that it is not practical to, repair or replace the returned product, the price therefor paid by Buyer will be credited and applied to future orders. Seller will make available to Buyer spare parts for purchase at prices set forth in Seller's then current price list. Upon return of such repaired products, the warranty with respect to such products will continue for the remaining unexpired warranty or sixty (60) days, whichever is longer.

Seller will provide Buyer with software bug fixes for products during the first ninety (90) days after product is purchased from Seller. During this period, Seller may offer maintenance releases on new software releases ("Software Releases"), at its sole discretion, to Buyer for software fixes. Outside of the period set forth herein, software fixes shall only be available through Software Releases.

Seller warrants to Buyer that services will be performed in a professional and workmanlike manner.

It is the sole and exclusive responsibility of Buyer to determine the suitability of any and all products of Seller for Buyer's intended purposes and uses. Seller warrants that the products sold hereunder conform to Seller's applicable specifications for such products (subject to Seller's standard tolerances for variations) as in effect at the time of shipment by Seller, or, if applicable, specifications provided by Buyer and expressly accepted by Seller in writing provided that Seller shall not have any liability whatsoever for any damage to or defect in products resulting directly or indirectly from events occurring after the shipment of such products by Seller and acceptance by Buyer. Products will be considered accepted by the conditions listed under Term 11, Inspection by Buyer.

THIS WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SELLER WITH RESPECT TO PRODUCTS AND SERVICES SOLD OR PROVIDED BY SELLER. SELLER GIVES AND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, OTHER THAN THAT EXPRESSLY SET FORTH HEREIN. NO REPRESENTATIVE OF SELLER IS AUTHORIZED TO GIVE OR MAKE ANY OTHER REPRESENTATION OR WARRANTY OR MODIFY THIS WARRANTY IN ANY WAY, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING. NO IMPLIED WARRANTY OF MERCHANTABILITY, NO IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE AND NO IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF PERFORMANCE IS GIVEN OR MADE BY SELLER OR SHALL ARISE BY OR IN CONNECTION WITH ANY SALE OR PROVISION OF PRODUCTS OR SERVICES BY SELLER, OR BUYER'S USE OF ANY PRODUCTS OR SERVICES OR SELLER'S AND/OR BUYER'S CONDUCT IN RELATION THERETO OR TO EACH OTHER AND IN NO EVENT SHALL SELLER HAVE ANY LIABILITY OR OBLIGATION WHATSOEVER UNDER OR IN CONNECTION WITH ANY SUCH WARRANTY WITH RESPECT TO ANY PRODUCTS OR SERVICES.

14. **Limitation on Seller's Liability:** Buyer acknowledges that no guarantees or assurances have been made as to the results that may be obtained from the use of the products or services sold hereunder. To the extent Buyer is purchasing services, the terms and conditions under which those services are provided (to the extent not covered herein) shall be subject to a separate Seller term sheet that will be provided to Buyer. Buyer acknowledges that it does not rely on, and waives any claim relating to, any recommendation or instruction given to Buyer by Seller or any of its representatives regarding the specification, storage, handling or use of products purchased and sold hereunder, which recommendation or instruction shall be followed by or acted upon by Buyer entirely at Buyer's own risk.

IN NO EVENT SHALL SELLER BE LIABLE TO THE BUYER FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR RELATED TO THIS AGREEMENT OR THE PRODUCTS OR SERVICES PROVIDED IN CONNECTION HEREWITH (INCLUDING LOSS OF PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE), HOWEVER ARISING, WHETHER FOR BREACH OF THIS AGREEMENT, INCLUDING BREACH OF WARRANTY OR IN TORT, EVEN IF THAT PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

SUBJECT TO SECTION 19 BELOW AND WITH THE EXCEPTION FOR PERSONAL INJURY (INCLUDING DEATH), OR PERSONAL PROPERTY DAMAGE, IN NO EVENT WHATSOEVER SHALL SELLER HAVE ANY LIABILITY TO BUYER, ARISING OUT OF, OR IN CONNECTION WITH, THE SALE OR USE OF THE PRODUCTS OR SERVICES SOLD HEREUNDER, THE TRANSACTIONS CONTEMPLATED HEREBY, OR SELLER'S OR BUYER'S CONDUCT OR ACTIONS IN RELATION TO ANY OF THE SAME OR TO EACH OTHER IN AN AMOUNT IN EXCESS OF AND SELLER'S LIABILITY SHALL BE STRICTLY LIMITED TO THE AMOUNT(S) ACTUALLY RECEIVED BY SELLER FROM BUYER AS PURCHASE PRICE FOR THE PRODUCTS OR SERVICES WHICH GIVE RISE TO SELLER'S LIABILITY.

15. **Retracts/Cancellations:** Authorization to return products purchased from Seller must be obtained from Seller prior to any such return. All returned products must be in the original, or substantially similar, packaging and container and shall conspicuously bear the return merchandise account number Buyer obtains from Seller prior to return. In Seller's sole discretion, credit may be granted with respect to returned products, less a fifteen percent (15%) restocking charge, provided that any returned products must be shipped to Seller in unopened boxes, freight prepaid, at Buyer's risk. Products canceled by Buyer within ten (10) days of the confirmed shipment date are subject to a cancellation charge of fifteen percent (15%) of the net value of the canceled portion of the order. Products canceled by Buyer within eleven (11) to thirty (30) days of the confirmed shipment date, shall be subject to a cancellation charge of ten percent (10%) of the net value of the canceled portion of the order. The parties agree that the cancellation charge is not imposed as a penalty, but as liquidated damages. Orders of non-standard products or special product configurations are not cancellable.

16. **Indemnification:** Subject to Section 19 below, Buyer agrees to indemnify, hold harmless and defend Seller (and its employees, subsidiaries, affiliates, successors and agents) from and against any and all judgments, liabilities, damages, losses, expenses and costs (including, but not limited to, court costs and attorneys' fees) incurred or suffered by Seller, which relate to or arise out of (a) Buyer's use, handling, sale or distribution of the products sold hereunder, (b) Buyer's breach of any representation, warranty or obligation hereunder, and/or (c) the infringement or violation of any third party's intellectual property or other rights arising out of or in connection with Seller's use of specifications, materials or other items provided to Seller by Buyer.

17. **Year 2000 Matters:** Seller warrants to Buyer that the products manufactured by Seller and sold hereunder, to the extent used in accordance with user documentation supplied by Seller, will not improperly generate, record, interpret, exchange or display dates within calendar year 2000, provided no product communicating with Seller's products improperly generates, records, interprets, exchanges or displays such dates. Seller's sole liability and Buyer's exclusive remedy for breach of the above warranty is for Seller, at its sole option, and provided Buyer has notified Seller promptly after discovery of a non-conformity (but in no event later than

December 31, 2000), to repair or replace non-conforming hardware, or to provide a maintenance release, patch or workaround for non-conforming software.

18. **Force Majeure:** Notwithstanding anything else in this agreement, no default, delay or failure to perform on the part of either party shall be considered a breach hereof if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of the party charged with a default, including, but not limited to, causes such as strikes, lockouts or other labor disputes, riots, civil disturbances, actions or inactions of governmental authorities, epidemics, war, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy, nuclear disasters, or default of a common carrier; provided, that for the duration of such force majeure the party charged with such default must continue to use all reasonable efforts to overcome such force majeure.

19. **Intellectual Property:** Seller will defend any action brought against Buyer to the extent based on a claim that a product supplied by Seller, when used for any of the purposes contemplated by Seller, directly infringes a third party United States patent or United States copyright. Seller will pay any award against Buyer, or settlement entered into on Buyer's behalf, based on such infringement only if Buyer notifies Seller promptly in writing of the claim, provides reasonable assistance in connection with the defense and/or settlement thereof, at Seller's expense, and permits Seller to control the defense and/or settlement thereof. Seller shall have no liability if the alleged infringement is caused by (i) use of other than the then-most-recent version of such product provided by Seller to Buyer hereunder, (ii) use of a product for which Seller has provided Buyer with modifications or substitute products pursuant to this Section 19, if use of such modifications or substitute products would have prevented the claim, or (iii) any combination of Seller's product with Buyer's product or other non-Seller equipment, programs or data, where Seller's product alone would not have given rise to the claim.

In the event of an infringement action against Buyer with respect to a product supplied by Seller, or in the event Seller believes such a claim is likely, Seller shall be entitled, at its option but without obligation or additional cost to Buyer or its customers, to (i) appropriately modify such products, or substitute other products which, in Seller's opinion, do not infringe any third party intellectual property rights; provided, that such modifications or substitutions shall not materially affect the fit or function of such products; (ii) obtain a license with respect to the applicable third party intellectual property rights; or (iii) if neither (i) nor (ii) is commercially practicable, terminate Buyer's licenses hereunder and reimburse Buyer for the cost of purchase less an accumulated straight line depreciation for a normal life cycle of the products; the life cycle will be determined in accordance with generally accepted accounting guidelines.

Notwithstanding anything contained herein, this Section 19 states Seller's entire liability for actual or alleged infringement of intellectual property rights.

20. **Maintenance, Support, and Training:** Any maintenance, support or training services that may be requested by Buyer shall require the parties to enter into a separate agreement, which services would then be provided at an additional charge.

21. **Demonstration Equipment:** Products sold as "demonstration equipment" may include equipment used by Alcatel for engineering development and customer demonstration, or products which have been traded-in by customers who are upgrading to new systems. Such demonstration equipment may be, in Alcatel's sole discretion, either new products or shall be completely refurbished by our factory and include the same warranties outlined in Section 13.

22. **Governing Law/Attorneys' Fees:** These General Terms and Conditions of Sale and the transactions contemplated hereby shall be governed by and construed and enforced in accordance with the laws of the State of Utah without regard to its conflicts of law rules. All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts within Utah, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts. In the event it becomes necessary for either party to employ an attorney in order to enforce the terms hereof, or to protect the rights of either party hereunder, and such party is successful in any action in connection herewith, the other party agrees to pay such prevailing party the reasonable attorney's fees and legal costs incurred. Term 20 in the WSCA Standard Contract Terms and Conditions shall have precedence over this term.

23. **Internet Transmissions:** Buyer acknowledges that Internet transmissions are subject to errors beyond Seller's control. No electronic transmission of data and/or information via Seller's web site shall give rise to any liability or obligation by Seller. Whether or not proper receipt of an electronic transmission has in fact occurred and the exact time at which proper receipt of an electronic transmission occurs shall be determined by Seller by reference to its web site transaction records and applicable procedures.

24. **Waiver/Severability/Amendments:** Seller shall not be deemed to have waived any provision hereof, or any breach by Buyer of any provision hereof, unless such a waiver is specifically set forth in writing and executed by an authorized officer of Seller. No waiver by Seller of any provision hereof or any breach or any breach by Buyer hereunder shall constitute a waiver of such provisions on any other occasion or a waiver of any other breach by the Buyer. The invalidity or unenforceability, in whole or in part, of any provision, term or condition hereof shall not affect the validity and enforceability of the remainder of such provision, term and condition or any other provision, term or condition. These General Terms and Conditions of Sale may not be amended except by written agreement of Seller and Buyer expressly referring herein.

Toll Free: Seller's products DO NOT provide immunity from fraudulent intrusion or toll fraud